

Douglas R. Ricks, OSB #044026
Colleen A. Lowry, OSB #123743
VANDEN BOS & CHAPMAN, LLP
319 SW Washington St., Ste. 520
Portland, OR 97204
Telephone: 503-241-4869
Fax: 503-241-3731

Of Attorneys for Debtors

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re

Mark Gordon Heron,
Mary Kathleen Heron,

Debtors.

Case No. 22-31614-pcm13

MOTION TO STRIKE UNTIMELY
OBJECTION TO CONFIRMATION

Debtors Mark Gordon Heron and Mary Kathleen Heron (hereinafter "Debtors"), by and through counsel, Vanden Bos & Chapman, LLP, hereby moves the court for an Order Striking the Objection to Confirmation filed by Creditor NewRez LLC d/b/a Shellpoint Mortgage Servicing ("Creditor") on January 5, 2023 (Docket No. 53) as untimely filed under Local Bankruptcy Rule 3015-3(c).

BACKGROUND

1. Debtors filed a voluntary petition for Chapter 13 bankruptcy on September 27, 2022.
2. The Chapter 13 Plan ("Plan") was filed on October 18, 2022 (Docket No. 23) and there has been no amended Plan filed since that time.
3. The Chapter 13 Meeting of Creditors was held on October 25, 2022.

4. Confirmation Hearing was held on November 21, 2022 but was adjourned until January 19, 2023, at 11:00 a.m. in order to resolve other matters.

5. Creditor has a secured lien against the real property located at 1749 22nd Street, Hood River, OR 97031, (the "Property") which is the Debtors' principal residence.

6. Debtor Mary Kathleen Heron ("Mary") is on legal title to the Property. The Mortgage or Note and Deed of Trust documents were executed by Mary's ex-spouse, Sean M. Palmieri.

7. Debtors listed Creditor on Schedule D filed on October 18, 2022 (Docket No. 20) and stated "Mortgage in the name of Debtor 2's ex-spouse." Debtors provided proper notice of the Chapter 13 bankruptcy filing to NewRez LLC, c/o Corporation Service Company, RA, 1127 Broadway Street NE, Suite 310, Salem, OR 97301. Additional notice was provided to Shellpoint Mortgage Servicing, c/o NewRez LLC, Registrant, 1100 Virginia Dr., Ste 125, Fort Washington, PA 19034.

8. Debtors propose in their Plan at ¶ 7 to maintain and pay directly the regular monthly mortgage payments to Creditor. Debtors propose in their Plan at ¶ 16 to sell or refinance the Property not later than May 30, 2027 (the 55th month of the Plan).

9. Debtors filed Schedule A/B on October 28, 2022 (Docket No. 20) listing the value of the Property as \$1,100,000.00. Debtors filed Amended Schedule A/B on December 7, 2022 (Docket No. 38) with no change to the value of the Property.

10. Creditor did not timely file a Proof of Claim. The claim deadline expired on December 6, 2022. On January 4, 2023, Debtors' counsel filed Proof of Claim No. 24 on behalf of Creditor and listed a secured claim amount of \$517,937.00 based on a mortgage statement.

ARGUMENT

Local Bankruptcy Rule 3015-3(c)(1) states as follows:

(1) Except as set forth in (4) or in LBF 1355.05, a confirmation objection must be filed and served on the debtor within 14 days after the meeting of creditors concludes.

The Meeting of Creditors took place and concluded on October 25, 2022. The deadline to file a timely Objection to Confirmation expired on November 8, 2022. Creditor filed its objection on January 5, 2023, almost 60 days after the deadline. In addition, the Notice of Chapter 13 Bankruptcy Case ("Notice") (Docket No. 4) was properly mailed to Creditor and states at Line 15 that an Objection to Confirmation must be filed and served within 14 days after the meeting of creditors concludes and refers to Local Bankruptcy Rule 3015-3(c).

LBR 3015-3(c)(4) allows for an untimely filed objection to confirmation to be considered by the court if the objector files with the objection a motion to treat the objection as timely. Creditor did not file a motion to treat the objection as timely and therefore LBR 3015-3(c)(4) is inapplicable to Creditor. Pursuant to LBR 3015-3(c)(4), the court should not consider the untimely filed objection. Local Bankruptcy Form 1355.05 is Notice of Pre-Confirmation Amendment of Plan and Confirmation Hearing wherein it states a deadline to object as seven (7) days before the confirmation hearing. LBF 1355.05 is only applicable if a pre-confirmation amended plan is being filed. There has been no pre-confirmation amended plan filed and, therefore, the deadline date found in LBF 1355.05 is inapplicable to Creditor.

Creditor has filed its objection almost 60 days past the deadline to file a timely objection and after receiving proper notice of this bankruptcy case. The Debtors' residential

address, which is the Property's location, is listed on the Notice of Bankruptcy Case filing.

Debtors move that the Objection be stricken by the court as untimely filed.

Although Debtors move for the Objection to be stricken, the Debtors will agree to add by interlineation of the Order Confirming Plan the following in order to address the arrearage:

"At ¶ 4(b)(1), in the Creditor column add "New Rez LLC d/b/a Shellpoint", in the Collateral column add "Residence", in the "Estimated Arrearage if Curing" column add "\$34,546", in the Interest Rate column add "0.0%", in the Monthly Plan Payment column add "AAFAAF". (AAFAAF is the abbreviation for all available funds after attorney fees.)

The Property is valued at \$1,100,000.00 while the mortgage loan is believed to be \$517,937.00. Creditor has an equity cushion of 52.91% and is adequately protected with the on-going regular monthly mortgage payments. The Ninth Circuit Appellate Panel has found that adequate protection existed where an 11.45% equity cushion existed. In re Boulders on the River, Inc., 164 B.R. 99, 104 (9th Cir. B.A.P. 1994). Creditor will be adequately protected until the sale or refinance date occurs not later than May 30, 2027, the 55th month of the Plan. If regular payments are not being made during the Plan to protect Creditor's secured interest, Creditor can move for relief from stay.

THEREFORE, for the reasons given, Debtor moves that the court enter an Order Striking the Objection to Confirmation.

Dated: 11 January 2023

VANDEN BOS & CHAPMAN, LLP

By: /s/Colleen A. Lowry
Colleen A. Lowry, OSB #123743
Douglas R. Ricks, OSB #044026
Of Attorneys for Debtors

CERTIFICATE - TRUE COPY

DATE: January 11, 2023

DOCUMENT: MOTION TO STRIKE UNTIMELY OBJECTION TO CONFIRMATION

I hereby certify that I prepared the foregoing copy of the foregoing named document and have carefully compared the same with the original thereof and it is a correct copy therefrom and of the whole thereof.

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing on:

Mark & Mary Kathleen Heron
1749 22nd Street
Hood River, OR 97031

Linda St. Pierre, Attorney for Creditor
McCalla Raymer Leibert Pierce, LLC
1544 Old Alabama Road
Roswell, GA 30076

by mailing a copy of the above-named document to each of the above in a sealed envelope addressed to the same at his, her, or their last known address. Each envelope was deposited in the Post Office at Portland, Oregon, on the above date, postage prepaid.

I hereby certify that the foregoing was served on all CM/ECF participants through the Court's Case Management/Electronic Case File system on the date set forth below.

Dated: January 11, 2023

VANDEN BOS & CHAPMAN, LLP

By: /s/Colleen A. Lowry
Colleen A. Lowry, OSB #123743
Douglas R. Ricks, OSB #044026
Of Attorneys for Debtors